

(4) Depositions.

(b) For the purpose of this section and §§ 308.521 and 308.522 of this subpart, the term *documents* includes information, documents, reports, answers, records, accounts, papers, and other data or documentary evidence. Nothing contained in this subpart will be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ will regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ and a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition, must accompany such motions.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 308.523 of this subpart.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 308.523 of this subpart.

(e) *Dispositions.* (1) If a motion for deposition is granted, the ALJ will issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena will specify the time, date, and place at which the deposition will be held.

(2) The party seeking to depose must serve the subpoena in the manner prescribed in § 308.507 of this subpart.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within 10 days of service.

(4) The party seeking to depose must provide for the taking of a verbatim

transcript of the deposition, and must make the transcript available to all other parties for inspection and copying.

(f) Each party must bear its own costs of discovery.

**§ 308.521 Exchange of witness lists, statements, and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties must exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 308.532(b) of this subpart. At the time such documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, must provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided in paragraph (a) of this section unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

**§ 308.522 Subpoenas for attendance at hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena must file a written request not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request must specify any documents to